

**FILED**UNITED STATES DISTRICT COURT  
LAS CRUCES, NEW MEXICO

## UNITED STATES DISTRICT COURT

JAN 11 2023

for the  
District of New MexicoMITCHELL R. ELFERS  
CLERK OF COURTIn the Matter of the Search of  
(Briefly describe the property to be searched  
or identify the person by name and address)

ROBERTO ESQUIVEL

Case No. 23-72 MR

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Roberto Esquivel

located in the \_\_\_\_\_ District of \_\_\_\_\_ New Mexico, there is now concealed (identify the person or describe the property to be seized):

Bodily fluids and/or tissue containing DNA.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. § 1114(a)(3);	attempted murder of an officer of the United States;
18 U.S.C. §§ 111(a)(1) and (b);	aggravated assault of an officer of the United States with a deadly weapon; and
18 U.S.C. § 924(c)(1)(A)(iii)	discharge of a firearm in furtherance of a crime of violence

The application is based on these facts:

☒ Continued on the attached sheet.☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.Sworn to before me <sup>VIA TELEPHONE.</sup> and signed in my presence.

Date: 1/11/23

City and state: Las Cruces, New Mexico

\_\_\_\_\_  
Applicant's signature

David Aucoin, FBI Special Agent

\_\_\_\_\_  
Printed name and title\_\_\_\_\_  
Judge's signature

Honorable Gregory J. Fouratt, US Magistrate Judge

\_\_\_\_\_  
Printed name and title



**AFFIDAVIT IN SUPPORT OF AN**  
**APPLICATION UNDER RULE 41 FOR A**  
**WARRANT TO SEARCH AND SEIZE**

I, David Aucoin, being first duly sworn, hereby depose and state as follows:

**Introduction and Agent Background**

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI) and have been employed as such since June 2021. I am currently assigned to the FBI's Albuquerque Division, Las Cruces Resident Agency where I am assigned to investigate criminal matters. By virtue of my employment with the FBI, I am authorized to conduct investigations into violations of federal laws, to include violent crimes, bank robberies, carjackings, violations of the Firearms Act, and various federal criminal violations. My law enforcement training and experience includes but is not limited to conducting physical surveillance; interviewing subjects, victims, and witnesses; writing affidavits for and executing search warrants; issuing federal grand jury subpoenas; and analyzing financial records.

2. Through my training and experience, I am aware that human bodily fluids and tissues, to include skin cells and saliva, contain deoxyribonucleic acid (DNA), which can be used to help identify an individual, and that DNA from human tissue can potentially be recovered and used to help identify an individual after that individual comes in contact with a surface.

**Relevant Statutes**

3. Title 18 U.S.C. § 1114(a) provides, "[w]hoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is



engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance.”

4. Title 18 U.S.C. §§ 111(a)(1), (b), makes it a crime for someone to “forcibly assault[], resist[], oppose[], impede[], intimidate[], or interfere[] with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties . . . with a deadly weapon.” A Border Patrol Agent constitutes an officer of the United States pursuant to 18 U.S.C. § 1114.

5. Title 18 U.S.C. § 924(c)(1)(A)(iii) provides, in relevant part, that “any person who, during and in relation to any crime of violence . . . for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence . . . if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.”

#### **Details of the Investigation**

6. On January 5, 2023, agents of the FBI Las Cruces Resident Agency learned from US Customs and Border Protection (CBP) officers and United States Border Patrol (USBP) agents of a USBP agent involved shooting that took place near Animas, New Mexico (NM). Based on the ongoing investigation, FBI learned the following:

7. On January 5, 2023, at approximately 11:30 a.m., a USBP (hereinafter “BPA 1”), while on duty, conducted a traffic stop of a vehicle the agent suspected was involved in alien smuggling on Highway 146 near Animas, New Mexico. BPA 1 was wearing plain clothes and his government-issued ballistic vest, marked on the front with “POLICE FEDERAL AGENT”



and displaying his USBP badge patch. While BPA 1 was engaged with the driver, identified as Roberto Esquivel, Esquivel opened fire on BPA 1 and struck the agent in his ballistic vest with two rounds of ammunition. BPA 1 returned fire and the vehicle sped away. The vehicle eventually rolled over, injuring some of the occupants.

8. Six total occupants were in the vehicle. Esquivel is a United States Citizen. The remaining five occupants of the vehicle are citizens of another country with no legal authority to be in the United States. Esquivel and one other occupant of the vehicle were transported to a hospital in El Paso, Texas to treat their injuries. BPA 1 was treated at a local hospital for any potential injuries but was later released.

9. Law enforcement agents on scene recovered a black in color Smith & Wesson .40 caliber handgun with serial number FZE4560. It was recovered approximately 150 yards east of the vehicle crash in the desert.

10. On January 5, 2023, FBI SAs Aucoin and Hill interviewed BPA 1, who provided SAs Aucoin and Hill with the following information. BPA 1, while on duty, observed a black in color vehicle that displayed unusual behavior while driving westbound near Highway 9 and Highway 81 near Animas, NM. BPA 1 conducted a traffic stop of the vehicle on Highway 146 near Animas, NM, and made contact with the driver of the vehicle. BPA 1 requested that the driver provide identification. The driver handed BPA 1 his state issued driver's license and was identified by BPA 1 as Roberto Esquivel. BPA 1 asked the passengers in the Spanish language what country they were from and if they had proper documentation to legally be present in the United States. The passengers replied that they were from Mexico and that they did not have the proper documentation to legally be in the United States. BPA 1 then requested that Esquivel step out of the vehicle. Esquivel began to open the door of the vehicle, but suddenly produced a black



in color handgun and began to discharge the handgun at BPA 1. BPA 1 backed across the street to find cover and returned fire. Esquivel sped away from the scene in the vehicle. BPA 1 holstered his weapon and discovered that he had been struck by approximately two rounds on the back of his ballistic vest. BPA 1 was then intercepted by his supervisor and taken to a hospital in Deming, NM, for medical examination.

11. On January 5, 2023, each of the five aliens who were in the vehicle with Esquivel were individually interviewed by FBI agents. Each of the five aliens identified a photograph of Esquivel as the driver of the vehicle and the shooter. At least two of the aliens observed Esquivel with the black handgun before and/or during the shooting. All five of the aliens heard the shooting take place between Esquivel and BPA 1. Multiple aliens were pleading with Esquivel to stop the vehicle while he was fleeing, but they were told by Esquivel to shut up.

12. On January 6, 2023, FBI SA Aucoin and SA Armida Maria Macmanus conducted a post-*Miranda* interview with Esquivel at a medical facility located in El Paso, Texas (TX). Esquivel was read his *Miranda* rights, understood the rights that were read to him, and volunteered the following information. Esquivel was transporting illegal aliens to Deming, New Mexico, when he was pulled over by an immigration officer, BPA 1. Esquivel initially thought he was being pulled over by a police officer, but later recognized that BPA 1 was an immigration officer by the markings on his ballistic vest. Esquivel hid a firearm under his leg so that BPA 1 would not see it. When BPA 1 asked Esquivel to exit the vehicle Esquivel panicked, drew the firearm on BPA 1, and discharged multiple shots at BPA 1.

13. Esquivel admitted that the Smith & Wesson .40 caliber handgun used during the shooting belonged to him. Esquivel told agents that he knew how to shoot and would shoot firearms in the desert. Esquivel also admitted that he knew that when you shoot a firearm,



bullets have the capability of harming and killing another person. BPA 1 returned fire with his weapon as Esquivel grabbed the keys to the vehicle and sped away from the scene. Esquivel crashed the vehicle during his escape and attempted to flee on foot before collapsing in the desert. During his attempt to flee from the scene, Esquivel tossed his black Smith & Wesson .40 caliber handgun into the desert.

14. Based on the above, there is probable cause to believe that DNA of Roberto Esquivel may be found on the (1) black Smith & Wesson .40 caliber handgun recovered by Law Enforcement on Scene.

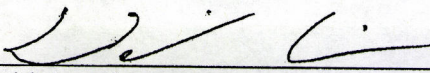
#### **Conclusion**

15. Based on the foregoing, I submit that probable cause exists to believe evidence of violations 18 U.S.C. § 1114(a)(3), attempted murder of an officer of the United States, 18 U.S.C. §§ 111(a)(1) and (b), aggravated assault of an officer of the United States with a deadly weapon, and 18 U.S.C. § 924(c)(1)(A)(iii), discharge of a firearm in furtherance of a crime of violence, may be found within the person of Robert Esquivel. The FBI collected Esquivel's DNA at the time of his arrest. I submit that this affidavit supports probable cause for a warrant to seize samples of bodily fluids and/or tissues by way of buccal swab and utilize Esquivel's DNA for comparison purposes.

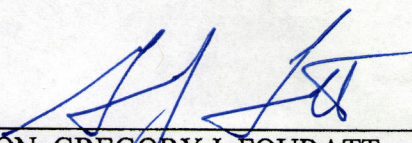
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DATED: 1/11/2023

  
\_\_\_\_\_  
David Aucoin  
Special Agent  
Federal Bureau of Investigation

Electronically signed and telephonically  
sworn this 11<sup>th</sup> day of January 2023.

  
\_\_\_\_\_  
THE HON. GREGORY J. FOURATT  
UNITED STATES MAGISTRATE JUDGE